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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1016

UNITED CALIFORNIA BANK and LILLIAN DISNEY TRUYENS, Co-Executors of the Estate of WALTER E. DISNEY, *Petitioners,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONERS' REPLY MEMORANDUM

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The petitioners herein feel compelled to submit this reply memorandum due to the fact that the Government's opposition to the Petition for Writ of Certiorari is premised upon a misstatement of fact. At page 4 of its Memorandum For The United States In Opposition, the Government states:

> "Despite the acknowledged conflict of decisions, we do not believe that the question presented warrants review by this Court at this time. *The Internal Revenue Service advises that there are no cases presently pending administratively or in the courts that involve the question.* In the last 12 years, *Statler Trust* and this case have been the only decided cases addressing the question." [Emphasis added.]

The Internal Revenue Service is in error. The petitioners are themselves aware of another case presenting the same question as that which is presented herein. The taxpayer in said other case is Security Pacific National Bank, as Executor of the Will of Hazel E. Wilson (Taxpayer I.D. No. 95-6218928). That taxpayer, for fiscal year ending September 30, 1969, paid or set aside to charity approximately $1,000,000 of net long-term capital gains. In the administrative proceedings concerning that taxpayer's fiduciary income tax return for said fiscal year, the Internal Revenue Service did not allow that taxpayer to compute the alternative tax in accordance with the method urged by the petitioners herein. Although said administrative proceedings have been completed, said other taxpayer still has time in which to bring suit for refund of income taxes, and if said taxpayer does so and is successful on the issue presented by the within Petition for Writ of Certiorari, said taxpayer stands to recover approximately $103,000 in income taxes.

Given the fact that the petitioners are personally aware of another case which, as set forth above, involves the same issue as that presented herein, it can be assumed that the Internal Revenue Service has overlooked other cases involving the same issue. Accordingly, no credence should be given to the Government's attempt, through its Memorandum in Opposition, to supplement the record herein.

Respectfully submitted,

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